

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

EDDY LEE SPEARMAN	§	
VS.	§	CIVIL ACTION NO. 9:15-CV-140
WILLIAM STEPHEN, <i>et al.</i> ,	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, Eddy Lee Spearman, an inmate currently confined at the Eastham Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed what appeared to be a Federal Tort Claim against defendants William Stephen, Brad Livingston, Jessie Owens, TDCJ-CID, and the Board of Pardons and Parole.

The Court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Lufkin, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends this complaint be dismissed without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b) as plaintiff has yet to pay the initial partial filing fee of \$9.60.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Plaintiff filed objections to the Report and Recommendation of United States Magistrate Judge. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).


After careful consideration, the Court finds plaintiff's objections lacking in merit. Plaintiff states he did not receive the order filed January 14, 2016 assessing the initial partial filing fee. However, plaintiff did receive a copy of the Report and Recommendation, recommending the case be dismissed for want of prosecution for failure to pay the initial partial filing fee. Plaintiff received a copy of the Report and Recommendation on April 27, 2016 (docket entry no. 15). Plaintiff,

however, has still failed to pay the initial partial filing fee as ordered and has not otherwise shown he cannot pay the fee.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. Plaintiff has thirty (30) days from entry of this order to pay the initial partial filing fee of \$9.60. Failure to comply with this order will result in dismissal of this case for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

SIGNED this 17th day of June, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE